

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1004 of 1999

-----  
PHILIPBHAI SULEMANBHAI KHRISTI

Versus

STATE OF GUJARAT  
-----

Appearance:

MR HM PARIKH for Petitioners

MR SS PATEL ADDL PUBLIC PROSECUTOR for Respondent No. 1  
-----

CORAM : MR.JUSTICE C.K.BUCH

Date of Order: 01/12/1999

ORAL ORDER

#. Heard learned counsel appearing for the petitioner.  
The petitioner has prayed for the following main relief;

"Your Lordships may be to issue a writ of certiorari or any other appropriate writ, order or direction setting aside the order of issuance of non bailable warrant against the petitioners and be further pleased to convert the order of non bailable warrant into an order of bailable warrant in connection with M. Case No : 99 of 1991 (now registered as Cri. Case No : 981 of 99) before the learned J.M.F.C. at Matar, dated 3-11-1999."

#. It is the say of the petitioners that non bailable warrant is issued by the learned JMFC and the petitioners are apprehending their arrest, following which, they had applied for anticipatory bail before this Court but that application has been withdrawn with condition to file present petition.

#. Looking to the nature of the original complaint and the allegations made therein, issuance of non bailable warrant directly against the petitioners can be said to be a harsh action but instead of non bailable warrant, the learned Magistrate could have issued bailable warrant to secure the presence of the accuseds - petitioners. It was also open for the learned Magistrate to issue

bailable warrant even he was satisfied that some offence has been committed. It is pertinent to note that the original complaint was filed in the year 1991 and after several years, directly a non bailable warrant has been issued on completion of the alleged inquiry. I agree that the learned Magistrate has power to issue non bailable warrant but such powers should be exercised judicially. Mr.Sudhanshu Patel, learned APP appearing for the State also fairly conceded that the bailable warrant could have served the purpose looking to the period between the order of issuance of the warrant and the date of the complaint. In view of above, I am inclined to allow this petition. The petition is allowed accordingly.

#. The non bailable warrant issued by the learned JMFC is ordered to be placed in abeyance. The learned JMFC, Matar is ordered to issue fresh bailable warrant of Rs.10,000/- each against the present petitioners under which the petitioners are ordered to furnish two sureties of Rs.5,000/- (Rupees Five Thousand each ). Rule is made absolute accordingly. Direct Service is permitted.

Date : 1-12-1999 [C.K.Buch, J. ]

#kailash#